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2016 Edition

Vexatious Litigation in Connecticut

A Guide to Resources in the Law Library

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Introduction

A Guide to Resources in the Law Library

- **"We begin our discussion by setting forth the elements of the common-law tort of vexatious litigation. Our Supreme Court has stated:** 'In a malicious prosecution or vexatious litigation action, it is necessary to prove want of probable cause, malice and a termination of [the] suit in the plaintiffs' favor.... [Establishing] a cause of action for vexatious suit requires proof that a civil action has been prosecuted not only without probable cause but also with malice.... It must also appear that the litigation claimed to be vexatious terminated in some way favorable to the **defendant therein.**' (Citations omitted; emphasis added; internal quotation marks omitted.) [QSP, Inc. v. Aetna Casualty & Surety Co.](#), 256 Conn. 343, 361, 773 A.2d 906 (2001); see also [Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cole](#), 189 Conn. 518, 538, 457 A.2d 656 (1983); [Vandersluis v. Weil](#), 176 Conn. 353, 356, 407 A.2d 982 (1978); D. Wright, J. Fitzgerald & W. Ankerman, Connecticut Law of Torts (3d Ed. 1991) § 162, p. 432.

We now identify the elements of statutory vexatious litigation. Section 52-568 provides: 'Any person who commences and prosecutes any civil action or complaint against another, in his own name or the name of others, or asserts a defense to any civil action or complaint commenced and prosecuted by another (1) without probable cause, shall pay such other person double damages, or (2) without probable cause, and with a malicious intent unjustly to vex and trouble such other person, shall pay him treble damages.' This court has stated that '[t]he elements of a common-law or statutory cause of action for vexatious litigation are identical.' [Norse Systems, Inc. v. Tingley Systems, Inc.](#), 49 Conn. App. 582, 596, 715 A.2d 807 (1998); see also [Frisbie v. Morris](#), 75 Conn. 637, 639, 55 A. 9 (1903); [Hebrew Home & Hospital, Inc. v. Brewer](#), 92 Conn. App. 762, 766-67, 886 A.2d 1248 (2005); [Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP](#), 89 Conn. App. 459, 467, 874 A.2d 266 (2005), *aff'd*, 281 Conn. 84, 912 A.2d 1019 (2007); [Shurman v. Duncan](#), 14 Conn. Supp. 293, 294 (1946)." [Bernhard-Thomas Bldg. Systems, LLC v. Dunican](#), 100 Conn. App. 63, 68-69, 918 A.2d 889, 893-894 (2007).

- "The torts of malicious prosecution and vexatious litigation are similar because in both types of action 'the claimed impropriety arises out of previous litigation.' [Blake v. Levy](#), 191 Conn. 257, 262, 464 A.2d 52. The principles governing both torts are based on the 'competing policies of deterrence of groundless litigation and protection of good faith access to the courts.' [Blake v. Levy](#), *supra*, 263, 464 A.2d 52." [Colli v. Kamins](#), Superior Court, Judicial District of Hartford-New Britain at Hartford, No. 277215 (November 8, 1983) (39 Conn. Supp. 75, 76) (468 A.2d 295, 297).

Section 1: Vexatious Suits in Connecticut

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the tort of vexatious lawsuits in Connecticut.

SEE ALSO:

- [Frivolous Lawsuits in Connecticut](#)
- Malicious Prosecution in Connecticut ([Section 2](#))
- Abuse of Process in Connecticut ([Section 3](#))

DEFINITIONS:

- "A vexatious suit is a type of malicious prosecution action, differing principally in that it is based upon a prior civil action, whereas a malicious prosecution suit ordinarily implies a prior criminal complaint. To establish either cause of action, it is necessary to prove want of probable cause, malice and a termination of suit in the **plaintiff's favor.**" [Vandersluis v. Weil](#), 176 Conn. 353, 356, 407 A.2d 982, 985 (1978).
- "In suits for vexatious litigation, it is recognized to be sound policy to require the plaintiff to allege that prior litigation terminated in his favor. This requirement serves to discourage unfounded litigation without impairing the presentation of honest but uncertain causes of action to **the courts.**" [Zeller v. Consolini](#), 235 Conn. 417, 424, 666 A.2d 64, 67 (1995).
- "[I]t is well settled that equity may enjoin vexatious litigation . . . This power of equity exists independently of its power to prevent a multiplicity of actions. It is based on the fact that it is inequitable for a litigant to harass an opponent not for the attainment of justice, but out of malice . . . To be vexatious, litigation must be prosecuted not only without probable cause but also with malice." (Citations omitted.) [Bridgeport Hydraulic Co. v. Pearson](#), 139 Conn. 186, 194, 91 A.2d 778, 781 (1952).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2015).
[Chapter 925](#). Statutory Rights of Actions and Defenses
§ [52-568](#). Damages for groundless or vexatious suit or defense.
§ [52-568a](#). Damages for groundless or vexatious suit against the owner or operator of a "pick or cut your own agricultural operation."

LEGISLATIVE:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

FORMS:

JURY INSTRUCTIONS:

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- Christopher Reinhart, *Vexatious Litigation and Sanctions Against Attorney*. Office of Legislative Research Report, [2008-R-0101](#). (January 30, 2008).
- 3A Joel M. Kaye and Wayne D. Efron, [Connecticut Practice Series: Civil Practice Forms](#) (4th ed. 2004). [Form 804.11. Vexatious Suit](#)
- 16A Thomas B. Merritt, [Connecticut Practice Series: Connecticut Elements of an Action](#) (2015-2016 edition). Chapter 15. Malicious Prosecution/Vexatious Litigation § 15:9. Sample trial court documents—Sample complaint § 15:10. —Sample answer containing affirmative defense
- Connecticut Judicial Branch Civil Jury Instructions (2008). Part 3: Torts 3.13. Intentional Torts 3.13-5. [Vexatious Suit - Claim under General Statutes § 52-568](#) 3.13-6. [Vexatious Suit - Claim at Common Law \(modified April 5, 2012\)](#)
- [Charlotte Hungerford Hospital v. Creed](#), 144 Conn. App. 100, 115, 72 A.3d 1175, 1184 (2013). **"The Supreme Court adopted the traditional standard of probable cause applicable to both litigants and their attorneys: '[C]ivil probable cause constitutes a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it.... Although the reasonable attorney is substituted for the reasonable person in actions against attorneys, there is no reason to craft a different standard that essentially would immunize attorneys from vexatious litigation claims by requiring a claimant to prove that 100 out of 100 attorneys would have agreed that the underlying claim was without merit.'** (Citations omitted; internal quotation marks omitted)."
- [Byrne v. Burke](#), 112 Conn. App. 262, 275-276, 962 A.2d 825, 834-835 (2009). **"[I]f it appears in the action for ... a vexatious suit, that the prosecution properly ended in a judgment of conviction, or that in the civil suit judgment was properly rendered against the defendant therein, such outstanding judgment is, as a general rule,**

conclusive evidence of the existence of probable cause for instituting the prosecution, or the suit.’ *Frisbie v. Morris*, 75 Conn. 637, 639–40, 55 A. 9 (1903). ‘[I]f the trial court determines that the prior action was objectively reasonable, the plaintiff has failed to meet the threshold requirement of demonstrating an absence of probable cause and the defendant is entitled to prevail.’ (Internal quotation marks omitted.) *Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP*, supra, 281 Conn. at 99, 912 A.2d 1019. ‘This is true although it is reversed upon appeal and finally terminated in favor of the person against whom the proceedings were brought.... Likewise, a termination of civil proceedings ... by a competent tribunal adverse to the person initiating them is not evidence that they were brought without probable cause.’ 3 Restatement (Second), Torts § 675, comment (b) (1977).”

- *Shaw v. Yarbrough*, Superior Court, Judicial District of Hartford at Hartford, No. FA 06-4022806 (September 13, 2006) (42 Conn. L. Rptr. 25) (2006 Conn. Super. Lexis 270842) (2006 WL 2733828). “In this paternity action, plaintiff seeks double or treble damages from defendant, pursuant to C.G.S. Sec. 52- 568, for the defendant’s having raised in his Answer to her complaint the contention that he is not certain if he is the father of the plaintiff’s son. Plaintiff asserts that this response in the pleadings and the subsequent necessity of proceeding with genetic testing to establish paternity (which has now been accomplished, with affirmative results), was a vexatious ploy on defendant’s part.... In this case, in the court’s view, there was absolutely no evidence presented that raised any question that the child’s father was the defendant, however, because of the rights afforded under C.G.S. Sec. 46b-160, the ‘without probable cause’ requirement of C.G.S. 52-568 cannot be met in this instance and the plaintiff’s motion is denied.”

WEST KEY NUMBERS:

- *Action*
9. Unnecessary or vexatious actions.
- *Malicious Prosecution*
25. Civil actions and proceedings.
(1). In general.
- *Injunction*
1168. Abusive, vexatious, or harassing litigation.
1169. —In general.
1170. —Particular cases.

ENCYCLOPEDIAS:

- Robin Miller, Annotation, *Validity, Construction, and Application of State Vexatious Litigant Statutes*, 45 [ALR6th](#) 493 (2009).
- 42 [Am. Jur. 2d Injunctions](#) (2010).
III. Kinds of Rights Protected and Matters Controllable

Particular Rights and Injuries

§ 80. Access to court; frivolous lawsuits

Grounds and Occasions for Relief

§ 181. Vexatious, frivolous, or oppressive litigation

- 52 [Am. Jur. 2d](#) *Malicious Prosecution* (2011).
 - I. In General
 - § 3. Distinctions
 - II. Elements of the Cause of Action
 - Lack of Probable Cause
 - § 52. Generally
- *Cause of Action for the Malicious Prosecution of Civil Actions*, 32 [COA2d](#) 131 (2006).
- 1A [C.J.S.](#) *Actions* (2005).
 - II. Cause or Right of Action
 - § 73. Unnecessary, vexatious, or frivolous actions
- Douglass B. Wright et al., [Connecticut Law of Torts](#) (3rd ed. 1991, with 2015 supplement).
 - Chapter XVIII. Vexatious Litigation
 - § 160. Introduction
 - § 162. Vexatious suit
- 3A Joel M. Kaye and Wayne D. Efron, [Connecticut Practice Series: Civil Practice Forms](#) (4th ed. 2004, with 2015 supplement).
 - Authors' Commentary** for Form 804.11
- 12 Robert M. Langer et al., [Connecticut Practice Series: Connecticut Unfair Trade Practices, Business Torts and Antitrust](#) (2015-2016 edition).
 - Chapter 4. CUTPA and Related Business Torts
 - § 4.15. Malicious prosecution, vexatious litigation, and abuse of process
- 16A Thomas B. Merritt, [Connecticut Practice Series: Connecticut Elements of an Action](#) (2015-2016 edition).
 - Chapter 15. Malicious Prosecution/Vexatious Litigation
 - § 15: 1. Elements of action
 - § 15: 2. Authority
 - § 15: 3. Remedies—Compensatory damages
 - § 15: 4. —Punitive or exemplary damages
 - § 15: 5. Limitations of actions: Statute of limitations
 - § 15: 6. Defenses—Limitations
 - § 15: 7. —Existence of probable cause
 - § 15: 8. Checklist
- Frederic S. Ury and Neal L. Moskow, [Connecticut Torts: The Law and Practice](#) (2nd ed. 2015).
 - Chapter 12. Bringing Intentional Tort Claims

TEXTS & TREATISES:

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§ 12.03. Bringing a claim for misuse of the legal system

- [1] Distinguishing among malicious prosecution, vexatious suits, and abuse of process
- [2] Historical perspective of cause of action relating to misuse of the legal system
- [3] Proving the required elements of malicious prosecution and vexatious suits
- [4] Establishing the lack of probable cause in the underlying action
- [8] Establishing that the underlying action terminated in the malicious **prosecution/vexatious litigation plaintiff's favor**
- [9] Recovering damages in a malicious prosecution/vexatious litigation suit
- [10] Defending a malicious prosecution or vexatious litigation suit
- [17] Checklist for malicious prosecution/vexatious litigation claims

- Daniel J. Krisch and Michael Taylor, [Encyclopedia of Connecticut Causes of Action](#) (2015).
 - Part 1. Common Law Causes of Action
 - 1V-2. Vexatious Litigation (Common-Law)
 - Part 2. Statutory Causes of Action (Traditional)
 - 2V-1. Vexatious Litigation (Conn. Gen. Stat. § 52-568)
- 1 Fowler V. Harper et al. [Harper, James and Gray on Torts](#) (3rd ed. 2006, with 2015 supplement).
 - Chapter 4. Malicious Prosecution and Abuse of Process
 - § 4.8. Malicious civil litigation
- Dan B. Dobbs, [The Law of Torts](#) (2nd ed. 2011).
 - Chapter 46. Process rights: Misusing and denying judicial Process
 - § 592. Wrongful civil litigation and tactics
 - § 593. Special-injury or special-grievance requirement
 - § 596. Damages
- [Restatement of the Law Second, Torts](#)
 - Chapter 30. Wrongful Use of Civil Proceedings
 - § 674. General principle
 - § 675. Existence of probable cause
 - § 676. Propriety of purpose
 - § 677. Civil proceedings causing an arrest or a deprivation of property
 - § 678. Proceedings alleging insanity or insolvency
 - § 679. Repetition of civil proceedings
 - § 680. Proceedings before an administrative board
 - § 681. Damages
 - § 681A. Burden of proof

§ 681B. Functions of court and jury

- Richard L. Newman & Jeffrey S. Wildstein, [Tort Remedies in Connecticut](#) (1996, with 2014 supplement).
 - Chapter 12. Intentional torts
 - § 12-3. Malicious prosecution and vexatious suit
 - (a). Introduction
 - (b). History
 - (c). Elements
 - (d). Damages
 - (e). Conn. Gen. Stat. § 52-226a
 - (f). Defenses

LAW REVIEWS:

- Sarah Gruber, *A Lawyer's Guide to Vexatious Litigation in Connecticut*, 88 Connecticut Bar Journal 184 (2015).
- Kenneth Rosenthal, *Vexatious Litigation in Connecticut: Malicious Prosecution of Civil Actions, Probable Cause, and Lawyer Liability*, 84 Connecticut Bar Journal 255 (2010).

Figure 1: Vexatious Suit

Vexatious Suit

1. On (*date*) the defendant in this action commenced a civil suit against the plaintiff in this action claiming (*state claim*) which was returnable to the superior court for the judicial district of (*name*) on (*return date*).
2. On (date), judgment in that action was rendered in favor of the plaintiff in this action to recover of the defendant in this action \$ costs of suit.
3. That action was commenced and prosecuted by the defendant in this action without probable cause, and with a malicious intent unjustly to vex and trouble him.
4. The plaintiff in this action necessarily expended in the defense of that action a much larger sum than the costs in that suit; to wit: \$.

The plaintiff claims, by force of statute in such case provided, to recover treble damages.

(P.B. 1963, Form 205; see Gen. Stat., § 52-568)

Table 1: Determining Existence of Probable Cause in Vexatious Litigation Action against an Attorney

Determining existence of probable cause in vexatious litigation action against an attorney in Connecticut
<p>“We agree with the supreme courts of California and Michigan that an attorney’s subjective belief in the tenability of a claim and the extent of an attorney’s investigation and research have no place in determining the existence of probable cause in a vexatious litigation action against an attorney and that the presence or absence of probable cause should be judged by an objective standard. That said, we nevertheless agree with — and, therefore, adopt — the Indiana Court of Appeals’ articulation of an objective standard of probable ‘[T]he objective standard which should govern the reasonableness of an attorney’s action in instituting litigation for a client is whether the claim merits litigation against the defendant in question on the basis of the facts known to the attorney when suit is commenced. The question is answered by determining that no competent and reasonable attorney familiar with the law of the forum would consider that the claim was worthy of litigation on the basis of the facts known by the attorney who instituted suit.’ (Emphasis added.) <i>Wong v. Tabor</i>, supra, 422 N.E.2d [1279,]1288 [(Ind. App. 1981)]. We are mindful that ‘[r]easonable lawyers can differ, some seeing as meritless suits which others believe have merit, and some seeing as totally and completely without merit suits which others see as only marginally meritless. Suits which all reasonable lawyers agree totally lack merit — that is, those which lack probable cause — are the least meritorious of all meritless suits. Only this subgroup of meritless suits present no probable cause.’ (Emphasis in original; internal quotation marks omitted.) <i>Roberts v. Sentry Life Ins.</i>, 76 Cal. App. 4th 375, 382, 90 Cal. Rptr. 2d 408 (1999), review denied, 2000 Cal. LEXIS 1059 (February 16, 2000). ‘This lenient standard for bringing a civil action reflects the important public policy of avoiding the chilling of novel or debatable legal claims and allows attorneys and litigants to present issues that are arguably correct, even if it is extremely unlikely that they will win. . . .’ (Internal quotation marks omitted.) <i>Padres L.P. v. Henderson</i>, 114 Cal. App. 4th 495, 517, 8 Cal. Rptr. 3d 584 (2003), review denied, 2004 Cal. LEXIS 3174 (April 14, 2004).” Falls Church Group v. Tyler, Cooper and Alcorn, 89 Conn. App. 459, 473-474, 874 A.2d 266, 275 (2005), affirmed Falls Church Group, Ltd. v. Tyler, Cooper and Alcorn, LLP, 281 Conn. 84, 912 A.2d 1019 (2007).</p>

Section 2: Malicious Prosecution in Connecticut

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the tort of malicious prosecution in Connecticut.
- SEE ALSO:**
- [Frivolous Lawsuits in Connecticut](#)
 - Vexatious Litigation in Connecticut ([Section 1](#))
 - Abuse of Process in Connecticut ([Section 3](#))
- DEFINITIONS:**
- “An action for malicious prosecution against a private person requires a plaintiff to prove that: (1) the defendant initiated or procured the institution of criminal proceedings against the plaintiff; (2) the criminal proceedings have terminated in favor of the plaintiff; (3) the defendant acted without probable cause; and (4) the defendant acted with malice, primarily for a purpose other than that of bringing an offender to justice.’ [McHale v. W.B.S. Corp.](#), 187 Conn. 444, 447, 446 A.2d 815 (1982) . . . the requirement that the plaintiff establish that the defendant initiated or procured the institution of criminal proceedings against him, is the only element that distinguishes the tort of malicious prosecution from the tort of vexatious litigation . . . Although the required showing for both torts essentially is the same, there is a slight difference in that a plaintiff in a malicious prosecution action must show initiation of the proceedings by the defendant.” [Bhatia v. Debek](#), 287 Conn. 397, 404-405, 948 A.2d 1009, 1017 (2008).
- FORMS:**
- 3A Joel M. Kaye and Wayne D. Effron, [Connecticut Practice Series: Civil Practice Forms](#) (4th ed. 2004).
Form 804.10. Malicious Prosecution
 - 16A Thomas B. Merritt, [Connecticut Practice Series: Connecticut Elements of an Action](#) (2015-2016 edition).
Chapter 15. Malicious Prosecution/Vexatious Litigation
§ 15:9. Sample trial court documents—Sample complaint
§ 15:10. —Sample answer containing affirmative defense
 - 17 [Am Jur Pleading and Practice Forms Malicious Prosecution](#) (2012 rev.).
§ 3. Checklist—Drafting complaint, petition, or declaration in action for malicious prosecution of prior civil action
§ 4. Complaint, petition, or declaration— For malicious prosecution of prior civil action—General form
- CASES:**
- [Giannamore v. Shevchuk](#), 108 Conn. App. 303, 318-319, 947 A.2d 1012, 1021 (2008). “Our Supreme Court has stated: ‘In a malicious prosecution action, the defendant

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is said to have acted with malice if he [or she] acted primarily for an improper purpose; that is, for a purpose other than that of securing the proper adjudication of the **claim on which [the proceedings] are based....'** (Citation omitted; internal quotation marks omitted.) [Mulligan v. Rioux](#), supra, 229 Conn. at 732, 643 A.2d 1226; see also 3 Restatement (Second), Torts, Malicious Prosecution § 668, p. 438 (1977). Furthermore, we note that '[m]alice may be inferred from lack of probable cause.' [Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP](#), supra, 281 Conn. at 94, 912 A.2d 1019. If the evidence supports a finding of a lack of probable cause, then the fact finder reasonably may conclude that the defendant acted with malice. See [Mulligan v. Rioux](#), supra, at 746, 643 A.2d 1226."

- [DeLaurentis v. New Haven](#), 220 Conn. 225, 250, 597 A.2d 807, 820 (1991). "Courts have taken three approaches to the 'termination' requirement. The first, and most rigid, requires that the action have gone to judgment resulting in a verdict of acquittal, in the criminal context, or no liability, in the civil context . . . The third approach, while nominally adhering to the 'favorable termination' requirement, in the sense that any outcome other than a finding of guilt or liability is favorable to the accused party, permits a malicious prosecution or vexatious suit action whenever the underlying proceeding was abandoned or withdrawn without consideration, that is, withdrawn without either a plea bargain or a settlement favoring the party originating the action."
- [Colli v. Kamins](#), Superior Court, Judicial District of Hartford-New Britain at Hartford, No. 277215 (November 8, 1983) (39 Conn. Supp. 75, 77) (468 A.2d 295, 297). "An abandonment of a criminal proceeding, so far as the plaintiff's right to prevail is concerned, is the equivalent of its successful termination. *Shaw v. Moon*, 117 Or. 558, 562, 245 P. 318 (1926). The rule governing the kindred tort of malicious prosecution is that it is sufficient if the defendant in the underlying prosecution was 'discharged without a trial under circumstances amounting to an abandonment of the prosecution without request from or by arrangement with him.' See *v. Gosselin*, 133 Conn. 158, 160, 48 A.2d 560 (1946)."

WEST KEY NUMBERS:

- *Malicious Prosecution*
 9-14. Nature and commencement of prosecution—Civil actions.
 25. Civil actions and proceedings.
 26-33. Malice.
 34-37. Termination of prosecution.
 38-77. Actions.

ENCYCLOPEDIAS:

- 52 [Am. Jur. 2d Malicious Prosecution](#) (2011).

- I. In General
- II. Elements of the Cause of Action
- III. Parties
- IV. Defenses
- V. Damages
- VI. Practice and Procedure

- *Cause of Action for the Malicious Prosecution of Civil Actions*, 32 [COA2d](#) 131 (2006).
- 54 [C.J.S.](#) *Malicious Prosecution* (2010).
 - I. In General
 - II. Elements of the Cause of Action for Malicious Prosecution
 - III. Defenses to Cause of Action for Malicious Prosecution
 - IV. Persons Entitled to Sue and Persons Liable
 - V. Actions
- Jimmie E. Tinsley, J.D., *Malicious Prosecution* 7 [POF2d](#) 181 (1975).
 - § 5. Proceedings on which action may be based—Civil action
- 1 Daniel C. Pope, [Connecticut Actions and Remedies, Tort Law](#) (1996).
 - Chapter 7. Malicious Prosecution
 - A. Introduction
 - § 7:01. Overview
 - B. Essential elements
 - § 7:02. Essential elements
 - § 7:03. Initiation of prior criminal proceeding
 - § 7:04. Initiation of prior civil proceeding
 - § 7:05. Lack of probable cause
 - § 7:06. Malice
 - § 7:07. Favorable termination
 - C. Remedies and damages
 - § 7:08. In general
 - D. Defenses
 - § 7:09. In general
 - E. Pleading and practice
 - § 7:10. In general
 - F. Research aids
 - § 7:11. Bibliography
- Douglass B. Wright et al., [Connecticut Law of Torts](#) (3rd ed. 1991, with 2015 supplement).
 - Chapter XVIII. Vexatious Litigation
 - § 160. Introduction
 - § 161. Malicious prosecution
- 3A Joel M. Kaye and Wayne D. Efron, [Connecticut Practice Series: Civil Practice Forms](#) (4th ed. 2004).).
 - Authors' Commentary for Form 804.10**

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 - Chapter 4. CUTPA and Related Business Torts
 - § 4.15. Malicious prosecution, vexatious litigation, and abuse of process
- 16A Thomas B. Merritt, [Connecticut Practice Series: Connecticut Elements of an Action](#) (2015-2016 edition).
 - Chapter 15. Malicious Prosecution/Vexatious Litigation
 - § 15:1. Elements of action
 - § 15:2. Authority
 - § 15:3. Remedies—Compensatory damages
 - § 15:4. —Punitive or exemplary damages
 - § 15:5. Limitations of actions: Statute of limitations
 - § 15:6. Defenses—Limitations
 - § 15:7. —Existence of probable cause
 - § 15:8. Checklist
- Frederic S. Ury and Neal L. Moskow, [Connecticut Torts: The Law and Practice](#) (2nd ed. 2015).
 - Chapter 12. Bringing Intentional Tort Claims
 - § 12.03. Bringing a claim for misuse of the legal system
 - [1] Distinguishing among malicious prosecution, vexatious suits, and abuse of process
 - [2] Historical perspective of cause of action relating to misuse of the legal system
 - [3] Proving the required elements of malicious prosecution and vexatious suits
 - [4] Establishing the lack of probable cause in the underlying action
 - [5] Effect of a criminal conviction on a malicious prosecution action
 - [8] Establishing that the underlying action terminated in the malicious prosecution/vexatious litigation plaintiff's favor
 - [9] Recovering damages in a malicious prosecution/vexatious litigation suit
 - [10] Defending a malicious prosecution or vexatious litigation suit
 - [17] Checklist for malicious prosecution/vexatious litigation claims
- Daniel J. Krisch and Michael Taylor, [Encyclopedia of Connecticut Causes of Action](#) (2015).
 - Part 1. Common Law Causes of Action
 - 1M-1. Malicious Prosecution
- 1 Fowler V. Harper et al. [Harper, James and Gray on Torts](#) (3rd ed. 2006, with 2015 supplement).

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Chapter 4. Malicious Prosecution and Abuse of Process

- § 4.1. General principles involved; What constitutes malicious prosecution
- § 4.2. The interests involved
- § 4.3. Initiation of criminal proceedings
- § 4.4. Favorable termination of proceedings
- § 4.5. Probable cause
- § 4.6. Malice
- § 4.7. Damages
- § 4.10. Other malicious and wrongful exposure to government action
- § 4.11. Policy factor in false arrest, malicious prosecution, defamation: Their relationship to each other
- § 4.12. Policy factor in false arrest, malicious prosecution, defamation: The absolute defense in all three

- Dan B. Dobbs, [The Law of Torts](#) (2nd ed. 2011).
Chapter 46. Process rights: Misusing and denying judicial Process
 - § 586. Elements of malicious prosecution
 - § 587. Malicious prosecution—Instigating or continuing the prosecution or proceeding
 - § 588. —Want of probable cause
 - § 589. Improper purpose or “malice”**
 - § 590. Termination of the prosecution
 - § 591. Special defenses
 - § 593. Special-injury or special-grievance requirement
 - § 596. Damages
- [Restatement of the Law Second, Torts](#)
Chapter 29. Wrongful Prosecution of Criminal Proceedings (Malicious Prosecution)
 - §§ 653-657. General principles
 - §§ 658-661. Termination of proceedings
 - §§ 662-667. Probable cause
 - §§ 668-669A. Purpose
 - §§ 670-671. Damages
 - §§ 672-673. Burden of proof and function of court and jury
- Richard L. Newman & Jeffrey S. Wildstein, [Tort Remedies in Connecticut](#) (1996, with 2014 supplement).
Chapter 12. Intentional Torts
 - § 12-3. Malicious prosecution and vexatious suit
 - (a). Introduction
 - (b). History
 - (c). Elements
 - (d). Damages
 - (e). Conn. Gen. Stat. § 52-226a
 - (f). Defenses

Section 3: Abuse of Process in Connecticut

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating the tort of abuse of process in Connecticut.

SEE ALSO:

- [Frivolous Lawsuits in Connecticut](#)
- Vexatious Litigation in Connecticut ([Section 1](#))
- Malicious Prosecution in Connecticut ([Section 2](#))

DEFINITIONS:

- “Abuse of process is the misuse of process regularly issued to accomplish an unlawful ulterior purpose. The gravamen of the complaint is the use of process for a purpose not justified by law. The distinction between malicious prosecution or vexatious suit and abuse of process as tort actions is that in the former the wrongful act is the commencement of an action without legal justification, and in the latter it is in the subsequent proceedings, not in the issue of process but in its abuse. The distinction in the elements essential for recovery in each tort is that in the action for abuse of process the plaintiff is not bound to allege or prove the termination of the original proceeding nor, in most jurisdictions, the want of probable cause, while both of those must be proven in an action for malicious prosecution or **vexatious suit.**” [Schaefer v. O. K. Tool Co., Inc.](#), 110 Conn. 528, 532-533, 148 A. 330, 332-333 (1930).

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Conn. Practice Book (2016).
 - [Chapter 4. Pleadings](#)
 - § 4-2. Signing of pleadings
 - [Chapter 10. Pleadings](#)
 - § 10-5. Untrue allegations or denials
 - [Chapter 24. Small Claims](#)
 - § 24-33. Costs in small claims
 - [Chapter 85. Sanctions](#)
 - § 85-2. Other actions subject to sanctions
 - (5). Presentation of a frivolous appeal or frivolous issue on appeal
 - § 85-3. Procedure on sanctions

FORMS:

- 1PI [Am Jur Pleading and Practice Forms Abuse of Process](#) (2014).
 - Checklist—Drafting a complaint, petition, or declaration in an action for abuse of process
- 16 Thomas B. Merritt, [Connecticut Practice Series: Connecticut Elements of an Action](#) (2015-2016 edition).
 - Chapter 7. Abuse of Process
 - § 7: 9. Sample trial court documents—Sample complaint
 - § 7: 10. —Sample answer containing affirmative defense

JURY INSTRUCTIONS:

- Connecticut Judicial Branch Civil Jury Instructions (2008).
Part 3: Torts
3.13. Intentional Torts
3.13-8. [Abuse of Process](#)

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Rogan v. Rungee](#), 165 Conn. App. 209, 217, 2016 WL 1637725 (2016). “**Damages suffered through an abuse of legal process not malicious must be compensatory, that is compensation for the natural consequences resulting, which would include injury to the feelings because of the humiliation, disgrace or indignity suffered, together with injury to the person and physical suffering....**” *McGann v. Allen*, 105 Conn. 177, 184, 134 A. 810 (1926). Thus, for the court to properly award emotional distress damages for abuse of process, the abuse of process must have **caused the defendant’s** emotional distress. Whether such causation exists is a question of fact. See [Burton v. Stamford](#), 115 Conn.App. 47, 87, 971 A.2d 739, cert. denied, 293 Conn. 912, 978 A.2d 1108 (2009).”
- [Larobina v. McDonald](#), 274 Conn. 394, 406-407, 876 A.2d 522, 530 (2005). “...although the definition of process may be broad enough to cover a wide range of judicial procedures, to prevail on an abuse of process claim, the plaintiff must establish that the defendant used a judicial process for an improper purpose.”
- [Varga v. Pareles](#), 137 Conn. 663, 667, 81 A.2d 112, 115 (1951). “**One who uses a legal process against another in an improper manner or to accomplish a purpose for which it was not designed is liable to the other for the injury caused thereby.** See Restatement, 3 Torts 682. In the former instance, the action lies, for example, against anyone who uses oppression or unreasonable force in the service of process, or causes it to be used, irrespective of his motive in so doing.”

WEST KEY NUMBERS:

- *Process*
172-213. Abuse of process.

ENCYCLOPEDIAS:

- 1 [Am. Jur. 2d Abuse of Process](#) (2016).
I. Nature and Elements of Action
II. Actionable Abuses of Particular Processes
III. Persons Liable
IV. Actions
- 52 [Am. Jur. 2d Malicious Prosecution](#) (2011).
I. In General
§ 3. Distinctions
- *Cause of Action for Abuse of Process*, 33 [COA2d](#) 465 (2007).

**TEXTS &
TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 72 [C.J.S. Process](#) (2005).
 - X. Abuse, or Malicious Use, of Process
 - §§ 152-155. In general
 - §§ 156-161. Elements
 - §§ 162-164. Actions

- 1 Daniel C. Pope, [Connecticut Actions and Remedies, Tort Law](#) (1996).
 - Chapter 8. Abuse of Process
 - A. Introduction
 - § 8:01. Overview
 - B. Essential elements
 - § 8:02. Elements
 - § 8:03. Justifiable initiation or issuance
 - § 8:04. Perversion of lawful process
 - C. Remedies and damages
 - § 8:05. In general
 - D. Defenses
 - § 8:06. In general
 - E. Pleading and practice
 - § 8:07. In general
 - F. Research aids
 - § 8:08. Bibliography

- Douglass B. Wright et al., [Connecticut Law of Torts](#) (3rd ed. 1991, with 2015 supplement).
 - Chapter XVIII. Vexatious Litigation
 - § 160. Introduction
 - § 163. Abuse of process

- 12 Robert M. Langer et al., [Connecticut Practice Series: Connecticut Unfair Trade Practices, Business Torts and Antitrust](#) (2015-2016 edition).
 - Chapter 4. CUTPA and Related Business Torts
 - § 4.15. Malicious prosecution, vexatious litigation, and abuse of process

- 16A Thomas B. Merritt, [Connecticut Practice Series: Connecticut Elements of an Action](#) (2015-2016 edition).
 - Chapter 7. Abuse of Process
 - § 7:1. Elements of action
 - § 7:2. Authority
 - § 7:3. Remedies—Compensatory damages
 - § 7:4. —Punitive or exemplary damages
 - § 7:5. Limitations of actions: Statute of limitations
 - § 7:6. Defenses—Limitations
 - § 7:7. —Lack of issuance of process
 - § 7:8. Checklist

- Frederic S. Ury and Neal L. Moskow, [Connecticut Torts: The Law and Practice](#) (2nd ed. 2015).
 - Chapter 12. Bringing Intentional Tort Claims
 - § 12.03. Bringing a claim for misuse of the legal system

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- [1] Distinguishing among malicious prosecution, vexatious suits, and abuse of process
- [11] Distinguishing abuse of process from vexatious suit and malicious prosecution
- [12] Proving the required elements of an abuse of process claim
- [13] Holding attorneys liable for abuse of process
- [14] Recovering damages in abuse of process cases
- [15] Pleading an abuse of process count
- [16] Defending an abuse of process suit
- [18] Checklist for abuse of process claims

- Daniel J. Krisch and Michael Taylor, [Encyclopedia of Connecticut Causes of Action](#) (2015).
 - Part 1. Common Law Causes of Action
 - 1A-1. Abuse of Process
- 1 Fowler V. Harper et al. [Harper, James and Gray on Torts](#) (3rd ed. 2006, with 2015 supplement).
 - Chapter 4. Malicious Prosecution and Abuse of Process
 - § 4.9. Abuse of process
- Dan B. Dobbs, [The Law of Torts](#) (2nd ed. 2011).
 - Chapter 46. Process rights: Misusing and denying judicial Process
 - § 594. Abuse of process
 - § 596. Damages
- [Restatement of the Law Second, Torts](#)
 - Chapter 31. Abuse of Process
 - § 682. General principle
- Richard L. Newman & Jeffrey S. Wildstein, [Tort Remedies in Connecticut](#) (1996, with 2014 supplement).
 - Chapter 12. Intentional torts
 - § 12-4. Abuse of process
 - (a). Elements
 - (b). Damages
 - (c). Pleading
 - (d). Defenses